

Assembly Bill No. 946

Passed the Assembly September 5, 2003

Chief Clerk of the Assembly

Passed the Senate September 2, 2003

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 11364.7 of, and to add Chapter 17 (commencing with Section 121347) to Part 4 of Division 105 of, the Health and Safety Code, relating to AIDS.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, Berg. AIDS: clean needle and syringe exchange.

Existing law authorizes pharmacists and physicians to furnish hypodermic needles and syringes without a prescription or permit for human use in the administration of insulin or adrenaline if certain conditions are met.

Existing law prohibits any public entity, and its agents or employees, from being subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.

This bill would authorize cities, counties, or cities and counties to develop clean needle and syringe exchange projects, and would make related changes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The rapidly spreading acquired immune deficiency syndrome (AIDS) epidemic, and the more recent spread of blood-borne hepatitis, pose an unprecedented public health crisis in California, and threaten, in one way or another, the life and health of every Californian.

(b) Injection drug users are the second largest group at risk of becoming infected with the human immunodeficiency virus (HIV) and developing AIDS, and they are the primary source of heterosexual, female, and perinatal transmission in California, the United States, and Europe.

(c) According to the Office of AIDS, injection drug use has emerged as one of the most prevalent risk factors for new AIDS cases in California.



(d) Studies indicate that the lack of sterile needles available on the streets, and the existence of laws restricting needle availability promote needle sharing, and consequently the spread of HIV among injection drug users. The sharing of contaminated needles is the primary means of HIV transmission within the injection drug user population.

(e) Most injection drug users use a variety of drugs, mainly heroin, cocaine, and amphetamines. Because amphetamine- and cocaine-injecting drug users inject more frequently than heroin users, their risk for HIV infection is higher.

SEC. 2. Section 11364.7 of the Health and Safety Code is amended to read:

11364.7. (a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 17 (commencing with Section 121347) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.



(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 3. Chapter 17 (commencing with Section 121347) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 17. CLEAN NEEDLE AND SYRINGE EXCHANGE
PROGRAM

121347. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important



bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to attempt to reduce the spread of HIV infection and blood-borne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe exchange program pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121347.5.

121347.5. A city and county, or a county, or a city with or without a health department, that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall authorize the one-for-one exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users. Providers and users of an exchange project authorized by the county, city, or city and county shall not be subject to criminal prosecution for possession of syringes or needles during participation in an exchange project.



Approved _____, 2003

Governor

